

Laura H. Phillips  
Partner  
laura.phillips@faegredrinker.com  
202-842-8891 direct

**Faegre Drinker Biddle & Reath LLP**  
1500 K Street, NW, Suite 1100  
Washington, DC 20005  
+1 202 842 8800 main  
+1 202 842 8465 fax

December 21, 2020

## VIA ELECTRONIC COMMENT FILING SYSTEM

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
45 L Street NE  
Washington, DC 20554

Re: Notice of *Ex Parte* Meeting  
**Advanced Methods to Target and Eliminate Unlawful Robocalls**  
CG Docket No. 17-59

Dear Ms. Dortch:

On December 17, 2020, representatives of the National Opinion Research Center at the University of Chicago ("NORC") – Jenny Kelly, Vice President of Telephone Surveys and Support Operations; Gail McEnroe, Consultant (Robocalling) of Operations; and Kate Hobson, Director of Telephone Surveys and Support Operations – and the undersigned met telephonically with Zenji Nakazawa, Legal Advisor to Chairman Ajit Pai.

Consistent with NORC's November 2 *ex parte* filing,<sup>1</sup> NORC noted that it has experienced material and unresolved "false positive" call blocking without notice or effective remedy that must be addressed when the Commission takes "a final agency action on the transparency and effective redress proceeding" under the explicit mandate of the TRACED Act.<sup>2</sup> Specifically, since the adoption of the "call blocking by default" framework in June 2019, NORC experienced several occasions of sudden increase (from 2% to 26%) of busy signals when making calls on behalf of the U.S. Centers for Disease Control and Prevention ("CDC") for its annual National Immunization Survey ("NIS"). This has significant implications for the efficiency of this CDC critical annual public health survey. In order to reach the same proportion of potential NIS survey participants for each phone number to complete interviews, NORC expended 28% more in labor costs because it had to dial that many more numbers to reach potential survey participants.<sup>3</sup> While the purpose of these calls, calling patterns, and the three

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<sup>1</sup> National Opinion Research Center Notice of *Ex Parte* Meeting (Nov. 2, 2020), <https://ecfsapi.fcc.gov/file/1102879628416/Ex%20Parte%20Letter%20Call%20Blocking%204th%20FNPRM%20-%20NORC%2011-2-2020.pdf>.

<sup>2</sup> Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. 116-105, 133 Stat. 3274 (2019) ("TRACED Act").

<sup>3</sup> More details about NORC's investigation into these call blocking incidents as well as the comparison of call completion results of two numbers NORC paid a reputation management



telephone numbers used by NORC are known both to public and to its originating carrier, which charges NORC for its services and also assigns NORC with these three telephone numbers, the originating carrier blocked NORC's calls without providing NORC with any form of notification. After NORC discovered blocking through close monitoring of its call trend and through paying a significant fee to a reputation management entity for investigation and "treatment" of its numbers, NORC contacted its originating carrier directly, hoping to learn about the cause for and resolve the blocking error. NORC's carrier provided no explanation and took no action to unblock and un-label NORC's numbers as "potential fraud." Instead, it directed NORC to submit a complaint to its chosen analytics provider. That complaint failed entirely to provide NORC any new information, nor were there any steps taken by the analytics provider to rectify the error.

NORC's efforts in seeking resolution from its originating carrier and the analytics provider were described in more detail in NORC's November 2 *ex parte* filing. On the December 17 call, NORC provided an update that it was finally able to meet with its originating carrier on December 2, 2020 after repeatedly attempting to contact the originating carrier through various means to seek a remedy since mid-October 2020. The analytics provider did not make its representatives available to attend this telephonic meeting and the originating carrier was unable on the call to answer NORC's question about why its numbers were blocked. Following that meeting, NORC's originating carrier resolved the number blocking error that had been ongoing and unresolved for almost two months and agreed to set up a call in early January with its analytics provider.

NORC's experience demonstrates that carriers currently are not providing notice or taking action to promptly investigate or resolve an erroneous blocking inquiry. NORC understands and appreciates the Federal Communications Commission's ("Commission") obligation to implement TRACED Act's important goal of combating illegal and harassing robocalls. However, the TRACED Act guarantees by law an appropriate level of protection for legitimate callers. Indeed, the TRACED Act explicitly requires that the Commission "ensure the robocall blocking services provided on an opt-out or opt-in basis" in this proceeding "are provided with transparency and effective redress options for **both consumers and callers**."<sup>4</sup> NORC's experience demonstrates that these legal guarantees are not reflected under current FCC policies and rules and more must be done.

NORC's comment and reply comment in this proceeding states that, "when blocking analytics do not yield reasonable results – such as when the result is repeated blocking of calls that the voice service providers have actual notice are legitimate calls originated by their own customers – the voice service provider cannot credibly argue that the analytics being applied are 'reasonable' and whatever redress they are applying is actually meaningful."<sup>5</sup> As NORC and various trade associations representing hundreds of companies have demonstrated on the record, there are recurring serious problems with many voice service providers' current robocall blocking services, with false positive blocking occurring without notice and without effective remedy. The FCC must require that voice service providers provide adequate transparency or

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entity to "treat" with those of a number NORC did not pay for "treatment" are discussed in NORC's November 2 *ex parte* filing. See National Opinion Research Center Notice of *Ex Parte* Meeting (Nov. 2, 2020), 2-3  
<https://ecfsapi.fcc.gov/file/1102879628416/Ex%20Parte%20Letter%20Call%20Blocking%204th%20FNPRM%20-%20NORC%2011-2-2020.pdf>.

<sup>4</sup> TRACED Act, § 10(b) (emphasis added).

<sup>5</sup> National Opinion Research Center Reply Comments, 8 (Sept. 29, 2020),  
<https://ecfsapi.fcc.gov/file/1092967828730/Reply%20Comments%20-%20NORC%209-29-2020.pdf>.



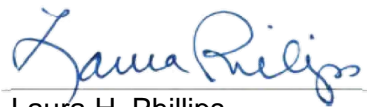
effective redress before they can defensibly claim any safe harbor protection or it will have failed to implement a key element of the TRACED Act.<sup>6</sup>

Because the safe harbor framework today fails to yoke any accountability for the application of mistaken analytics or failures by carriers to promptly investigate and resolve false positive blocking to earn the benefit of a safe harbor, it is critical that the Commission does not further reward that market failure and extend carriers additional safe harbor protection without implementation of clear notice and prompt redress mechanisms. Carriers need to have demonstrated the efficacy of their chosen blocking analytics before network-based blocking can be accorded any form of safe harbor.

To that end, NORC again urged the Commission to require that carriers provide immediate, real-time notification to callers when they block calls, resolve any claims of erroneous blocking or mislabeling within one or three business days, and adopt effective rules that must be implemented before any safe harbor is extended.

Please contact the undersigned with any questions regarding this letter.

Respectfully submitted,



Laura H. Phillips  
*Counsel to the National Opinion Research Center*

cc: Zenji Nakazawa

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<sup>6</sup> See, e.g., Trade Associations Notice of *Ex Parte* Meeting (Nov. 23, 2020), <https://ecfsapi.fcc.gov/file/112379963429/Associations%2011.23.2020%20Fourth%20FNPRM%20ex%20parte.PDF>.